

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

**DIRECTOR OF THE DEPARTMENT
OF INSURANCE, FINANCIAL
INSTITUTIONS & PROFESSIONAL
REGISTRATION
STATE OF MISSOURI,**

Petitioner,

vs.

FRANK S. NORPHY,

Respondent.

RECEIVED

AUG 31 2009

Administrative Hearing Commission

Case No.: 09-0530 DI

PETITIONER'S SECOND AMENDED COMPLAINT

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the license held by Respondent, Frank S. Norphy, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department of Insurance, Financial Institutions and Professional Registration issued Respondent Frank S. Norphy an insurance producer license (No. PR359303) on November 15, 2005. Such license was suspended for tax non-compliance on June 12, 2008, and is set to expire on November 15, 2009.

3. The Centers for Medicare & Medicaid Services (“CMS”) is the federal agency responsible for administering Medicare and Medicaid.

4. The Medicare Marketing Guidelines reflect CMS’s interpretation of the marketing requirements and related provisions of the Medicare Advantage and Medicare Prescription Drug Benefit rules. 42 C.F.R. 422, 423. The Medicare Marketing Guidelines prohibit door-to-door solicitation, or cold calling, without first receiving an invitation or request from the consumer to provide assistance in his or her home. The Medicare Marketing Guidelines also explain how benefits apply to dual eligible individuals.¹

5. State insurance departments coordinate regulatory efforts with CMS. While CMS regulates the insurance products and marketing materials, state insurance departments retain authority over company financial solvency and the discipline of licensed insurance producers for improper sales practices.

6. With the exception of Respondent and Department employees, all individuals mentioned in this Complaint are dual eligible individuals.

7. Care Improvement Plus (CIP) is a Medicare Advantage plan designed for individuals who have been diagnosed with diabetes, heart failure, chronic obstructive pulmonary disorder (COPD), and/or end stage renal disease (ESRD).

8. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2008).

¹ “Dual eligible” means a person who is eligible for benefits under both Medicare and Medicaid (now, MO HealthNet).

COUNT I

9. Respondent intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance, an unfair trade practice as defined by § 375.936(6), RSMo (2000), and which is a ground to discipline his insurance producer license pursuant to §§ 375.141.1(5), and (7) RSMo (Supp. 2008).

10. The facts are as follows:

- a. On or about July 12, 2007, Respondent visited Charlene Marquess' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent explained the insurance policy to Ms. Marquess and she enrolled believing she would maintain her traditional Medicare benefits; however, under the policy Ms. Marquess was not permitted to maintain her traditional Medicare benefits because Medicaid would not pay the co-payments associated with the Medicare Advantage insurance policy. Medicaid would pay co-payments associated with traditional Medicare.
- b. September 4, 2007, Respondent sold a Medicare Advantage insurance policy to Irene Fults. Respondent told Ms. Fults that, under the policy Medicaid would pay co-payments. This was a false statement because Medicaid would not pay the co-payments associated with the Medicare Advantage insurance policy. Medicaid would pay co-payments associated with traditional Medicare.
- c. March 28, 2008, Respondent sold a Medicare Advantage insurance policy to Joanna Lindsey. Respondent told Ms. Lindsey that her doctor would

accept the policy and that the policy required no out-of-pocket costs – both of which were false statements.

COUNT II

11. Respondent made false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, agency, broker or other person, an unfair trade practice as defined by § 375.936(7), RSMo (2000), and a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008).

12. The facts are as follows:

- a. Petitioner incorporates the facts alleged in paragraph 10, above, as though fully set forth herein.
- b. On or about July 25, 2007, Respondent met with Jennie Wheatley in her home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent asked Ms. Wheatley if she had heart problems and Ms. Wheatley stated that she did not have any heart problems. Respondent completed an insurance application for Jennie Wheatley that falsely indicated that Ms. Wheatley had COPD.

13. Respondent's false statements to proposed insureds and on insurance policy applications for the purpose of obtaining commissions constitute an unfair trade practice and is a ground to discipline his insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008).

COUNT III

14. Respondent made material misrepresentations and engaged in a pattern or practice of making false statements of material facts in connection with the offer, sale, solicitation or negotiation of insurance in violation of § 375.144, RSMo (Supp. 2008). Such conduct is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008).

15. The facts are as follows:

- a. Petitioner incorporates the facts alleged in paragraphs 10 and 12, above, as though fully set forth herein.

COUNT IV

16. Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of business in this state, by violating Medicare Marketing Guidelines. Such conduct is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

17. The facts are as follows:

- a. Petitioner incorporates the allegations in paragraphs 10 and 12, above, as though fully set forth herein.
- b. On or about July 12, 2007, Respondent visited Ada Walters' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent told Ms. Walters that God had sent him. Without asking about Ms. Walters' health, Respondent completed an insurance application for Ms. Walters and indicated that she had heart failure.

- c. On May 14, 2008, Respondent met with Diana Brady, Department Special Investigator, and Mary Kempker, Department Consumer Affairs Division Director, to discuss numerous complaints the Department received regarding Respondent's sales practices.
- d. During the May 14, 2008, meeting, Ms. Brady and Ms. Kempker educated Respondent regarding the CMS Medicare Marketing Guidelines and Medicare and Medicaid benefits and limitations under Medicare Advantage plans. During the meeting, and while under oath, Respondent indicated that he understood the CMS Medicare Marketing Guidelines and benefits as applied to dual eligible individuals, including the fact that Medicare Advantage plans do not cover Medicare Advantage copayments and that cold calling or door-to-door solicitation without an appointment is prohibited by CMS Medicare Marketing Guidelines.
- e. On June 23, 2008, the Department received a complaint on behalf of Vickie Bradshaw, a dual eligible person, regarding Respondent's sales practices when he visited Ms. Bradshaw's home on June 19, 2008 without an appointment.
- f. On June 23, 2008, the Department received a complaint on behalf of Arthur Hazard regarding Respondent's sales practices when he approached Mr. Hazard without an appointment on June 19, 2008.
- g. On August 12, 2009, the Department received a letter from a CMS contractor, SGS Medic North. Such letter stated that Respondent visited Marjorie Sidmon's home, without an appointment, in February 2009.

Further, the letter stated that Respondent used Ms. Sidmon's personal information to complete an online application for a Medicare Advantage insurance policy without her authorization.

18. Respondent's continued failure to abide by the CMS Medicare Marketing Guidelines regarding door-to-door sales and sales to dual eligible individuals evidences his use of fraudulent, coercive, and dishonest practices and shows incompetence and untrustworthiness in the conduct of business in this state. Such conduct is a ground to discipline his insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

COUNT V

19. Respondent used fraudulent, coercive, or dishonest practices, and demonstrated untrustworthiness in the conduct of business in this state. Such conduct is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

20. The facts are as follows:

- a. Care Improvement Plus (CIP) is a Medicare Advantage plan designed for individuals who have been diagnosed with diabetes, heart failure, COPD, and/or ESRD.
- b. RB Insurance Group, LLC, is an insurance agency that contracts with CIP to allow RB Insurance Group, LLC's employed producers to become CIP-certified producers.
- c. Respondent was authorized to write for CIP until his writing privileges were suspended by CIP on June 30, 2008 in order for CIP to investigate consumer complaints filed against Respondent.

- d. Following their investigation, CIP sent a termination letter dated September 10, 2008, to RB Insurance Group, LLC, requiring the agency to terminate Respondent's as a CIP representative.
- e. In the termination letter CIP indicated that they had reason to believe Respondent violated CMS guidelines by conducting door-to-door sales and using high pressure sales practices. CIP also indicated that Respondent had in the past been placed on suspension and received counseling for failing to comply with CIP complaint investigation procedures.
- f. On or about April 20, 2009, Respondent sent a letter to CIP seeking a reversal of his "termination for cause" and reinstatement as an agent with CIP. In the April 20, 2009 letter, Respondent stated that he was "exonerated" by the Department of Insurance and that the Department was taking no disciplinary actions regarding the previously referenced consumer complaints.

21. Respondent's statements in the April 20, 2009 letter are false in that Petitioner does not "exonerate" producers. Respondent's statements in the letter are also false because Petitioner *never* advised Respondent that no disciplinary action was recommended or pending.

22. Respondent's false statements constitute fraudulent, coercive, or dishonest practices, and demonstrate untrustworthiness in the conduct of business in this state. Such conduct is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

COUNT VI

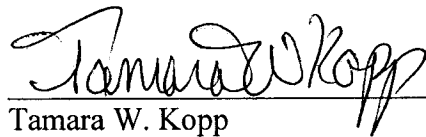
23. Respondent failed to notify the Director of a change of address, on forms prescribed by the Director, within 30 days of the change, in violation of § 375.141.5, RSMo, and a ground to discipline Respondent's insurance producer license pursuant to 375.141.1(2), RSMo.

24. The facts are as follows:

- a. Department records indicate that Respondent currently resides at 2404 South Harvard Avenue, Independence Missouri, 64052.
- b. Respondent, in fact, currently resides at 3001 South Hall Avenue, Independence Missouri, 64052.
- c. Respondent failed to notify the Director of this change of address within 30 days of the change.

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent Frank S. Norphy's Missouri insurance producer license pursuant to §§ 375.141.1(2), 375.141.1(5), 375.141.1(7), and 375.141.1(8), RSMo (Supp. 2008).

Respectfully submitted,



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ATTORNEY FOR PETITIONER
Director of the Missouri Department
of Insurance, Financial Institutions &
Professional Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing, including all attachments, was mailed first class, with sufficient postage attached, via the United States Postal Service on this 31st day of August, 2009 to:

Frank S. Norphy
3001 South Hall Avenue
Independence, Missouri 64052

